

COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Teaching Period	Semester 1, 2016

FINAL EXAMINATION	DURATION
LAW514 – Commercial Law	
	Reading Time: 20 minutes
	Writing Time: 180 minutes

INSTRUCTIONS TO CANDIDATES

Total marks for this exam: 50 marks.

Section A contains 20 multiple choice questions worth 1 mark each (**total of 20 marks**).

Section B contains short and long answer questions worth a **total of 30 marks**. You must choose and answer 2 (two) of 3 (three) questions, worth 15 marks each.

Identify and discuss all relevant issues and refer to legislation and/or case law (where relevant) to justify answers to questions in both sections.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination.

Any calculator is permitted.

Any handwritten material is permitted.

Any hard copy, English dictionary is permitted (annotated allowed).

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 16 Page Book 1 x 4-Multiple Choice Answer Sheet

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DOUBLE-SIDED.**

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Section A

Multiple Choice Questions

Total Marks for this section: 20 marks

This section should be answered on the Answer Sheet provided. Please ensure that your name and student number have been written on the Answer Sheet and place the Answer Sheet in the completed Answer Booklet.

Each question in Section A is worth 1 mark.

Suggested time allocation for Section A: 60 to 80 mins.

Section B commences on the next page

Section B

Short and Long Answer Questions

Total Marks for this section: 30 marks

This section should be answered in the Answer Booklet provided.

Choose and answer two (2) out of the following three (3) questions.

Marks for each question are indicated.

You should aim to write half a page to 1 page for each part-question worth 5 marks.

You should aim to write 1 to 2 pages for each part-question worth 10 marks.

Suggested time allocation for Section B: 80 to 100 mins.

Question 1 [Total 15 marks]

- (a) Sanger Pty Ltd operates a chain of sandwich stores (named 'Sanger') which make and serve express meat and salad rolls and sandwiches for walk-in customers. For the month of March, Sanger stores advertised a 'special customer deal' where customers who purchased a large-size sandwich could also purchase a 'mini-music player' for just a dollar (\$1). Some customers visited Sanger stores in September and inquired about the offer - some customers thought they could buy a cheap MP3 player. In fact, Sanger was offering small pocket radios for \$1 (Sanger's marketing manager thought the advertisement was reasonable because radios can play music). Sanger obtained the pocket radios from a Brazilian manufacturer at a discounted price and Sanger had nothing to do with their manufacture or assembly. Unfortunately, several customers who took up the deal later complained of minor injuries sustained by using the pocket radios. It appears that a manufacturing defect caused some of the radios to overheat and produce minor scalding (small burns) when the radio came into contact with the customer's skin.

Explain two potential legal actions which may be brought against Sanger under the *Competition and Consumer Act 2010* (Cth).

(10 marks)

- (b) Sanger's main competitor in Darwin is Sandway Pty Ltd ('SW') which has three stores located near each of Sanger's stores. Sanger's Northern Territory manager is approached by the CEO of SW. SW's CEO asks if Sangers would be prepared to agree that both Sangers and SW increase their existing prices by 8% during lunch hours (12noon to 2pm) on Monday to Friday. Advise Sangers's NT manager - from a legal perspective - on how he/she should respond to SW's request and why.

(5 marks)

Questions 2 and 3(a) are on the next page

Question 2 [15 marks]

Tree Tops Pty Ltd ('TT') runs a garden maintenance services business. TT sends out an employee gardening worker to do a residential job. The job is to trim and maintain a rooftop garden of an apartment building (TT was contracted by the owner's corporation responsible for maintaining the common property/building). The residents in the building are told - by a general notice placed in each resident's mailbox - that there is garden work being done on the roof in the morning and that they should avoid going up to the rooftop before lunchtime. About 10 minutes after the TT worker starts work on the garden, a resident comes up the internal stairs to the rooftop to have a cigarette. The resident passes through the doorway at the top of the stairs, walks out on to the rooftop and slips over on a palm leaf and breaks his wrist (the palm leaf had just been cut off one of the garden trees by the TT worker). The resident goes straight to hospital and later that afternoon contacts TT's office to complain about the incident. The resident says that his lawyer will be in contact with a negligence claim against TT for compensation for his injury, including medical expenses and money lost by cancelling an overseas ski holiday the resident had planned for the following week.

- (a) Advise TT on whether it is liable to pay compensation to the resident for negligence and why/why not. In your answer, explain why or why not TT is responsible for the actions of the gardener.

(10 marks)

- (b) If TT is liable for negligence, explain whether TT will have to compensate the resident for both the medical expenses and the cancelled holiday.

(5 marks)

Question 3 [15 marks]

Teresa, the general manager of a courier business, saw an advertisement by a car dealer in the daily paper advertising 'Korean automatic sedans at a special low price of \$15,000'. Teresa showed her assistant, Jenny, the advertisement and said to Jenny, 'I give you authority to purchase one of these advertised sedans for the business immediately. We need a new sedan for our small delivery jobs which are growing in number.'

Jenny went to the car dealership, and spoke to the dealer, Pamela, and explained that she was buying a car for her employer, Teresa. Jenny showed Pamela her business card (which has the business name – Teresa & Associates – printed on the card). Pamela then explained to Jenny that the Korean sedan may be too expensive to run (in terms of fuel consumption) for intensive use on deliveries. Pamela recommended another Australian model (sedan) which sold for \$20,000. Jenny phoned Teresa for instructions but was informed that Teresa had been urgently required interstate and could not be contacted for several days. Jenny purchased (on credit) the Australian sedan as agent for Teresa, and took immediate delivery.

Teresa returns from interstate and is very upset about the purchase. She has just received a letter from Pamela demanding payment for the car.

- (a) With reference to the relevant law, discuss whether Teresa is liable for the payment of the car and whether Teresa can bring an action personally against Jenny.

(10 marks)

Question 3(b) is on the next page

Teresa has also discovered that for the last three weeks Jenny has been taking money out of the office petty cash tin and using it to buy her lunch each day. Teresa is very angry and sacks Jenny immediately (Teresa sends Jenny home and tells her to never come back). Jenny has written a letter to Teresa threatening to challenge her dismissal as 'unfair' according to law.

(b) Did Teresa breach any law by 'sacking' (dismissing) Jenny? Explain why or why not.

(5 marks)